IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1006 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JOITIBEN BABUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1006 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

Mr. I.M.Pandya, ASSTT. GOVERNMENT PLEADER for Respondent No. 1-3

MR BG JANI for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/08/2001

ORAL JUDGEMENT

Rule. Heard the learned counsel for the parties. By means of this petition, the petitioner has

prayed for quashing and setting aside the order dated 4.1.2001 passed by the State of Gujarat thereby confirming the order dated 10.2.2000 passed by the respondent no. 2 in appeal no.6 of 1999.

2. The petitioner is an elected Sarpanch of village Ganeshpura (Gambhoo). She has not commited any irregulariity, illegality or misuse of the office of Sarpanch in any manner. Some in the opposition party made an application to the Mamlatdar stating that the petitioner has got cut four trees, one treet of Neem and three trees of Khijda. Accordingly, case no. 1 of 1991 was registered and the matter was inquired by the Circle Officer. A Panchnama was prepared and statements of some of the persons were recorded. On the basis of such statements, without issuing notice to the petitioner, the Mamlatdar passed the order dated 30th October, 1999 imposing penalty of Rs.1000/- for each tree. When the petitioner came to know about the order passed by the Mamlatdar, she received a copy thereof and filed appeal no. 6 of 1999 before Deputy Collector, Mahesana against the order passed by the Mamlatdar, on the ground that no show cause notice was issued to the petitioner nor any statement of the petitioner was recorded nor any opportunity was afforded to her to produce any evidence in this respect. After considering the contentions raised by the petitioner, the Deputy Collector, Mahesana vide his order dated 10th February, 2000 remanded the matter to the Mamlatdar. After giving an opportunity of hearing to the petitioner, the Mamlatdar was required to take a decision on the basis of the material on record. The respondent no. 4 who is a private party preferred Revision Application no. 16 of 200 before the State Government. The State Government, after hearing the parties, set aside the order passed by the Deputy Collector and confirmed the order of the Mamlatdar. Hence, this petition has been filed against the order of the State Government.

2. It is contended by the learned counsel for the petitioner that the order passed by the State Government is illegal and perverse inasmuch as the State Government has not considered the fact that a show cause notice was not issued to the petitioenr nor any reasonable opportunity was afforded to plead his case before Mamlatdar. Hence, the order of the State Government is against principles of natural justice and the State Governmetn has exceeded its jurisdiction while setting aside the order passed by the Deputy Collector.

3. The learned counsel for the respondent

no. 4 is in agreement that the order of the State Government be set aside and the order of the Deputy Collector be maintained so that the matter may be re-inquired by the Mamlatdar in accordance with law.

4. Without going into the merits of the case and in the facts and circumstances of the case, the order dated 4.1.2001 passed by the State Government in Revision Application no. 16 of 2000 is hereby set aside and the order dated 10.2.2000 passed by the Deputy Collector, Mahesana is maintained. The matter is remanded to the Mamlatdar to consider and decide the matter afresh in compliance with the order dated 10.2.2000 of the Deputy Collector after giving an opportunity of hearing to the petitioner. The Mamlatdar is also directed to proceed with the case and decide the same as early as possible. Rule is made absolute accordingly with no order as to costs.

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